



## INTERIOR BOARD OF INDIAN APPEALS

Lower Elwah Tribe v. Portland Area Director, Bureau of Indian Affairs

18 IBIA 50 (11/08/1989)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

LOWER ELWHA TRIBE

v.

PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-78-A

Decided November 8, 1989

Appeal from a decision denying a fiscal year 1989 Core Management grant application.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Financial Matters:  
Financial Assistance

Decisions concerning whether a tribe's application for a Core Management grant should be funded are committed to the discretion of the Bureau of Indian Affairs. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

APPEARANCES: Elaine Moore, Business Manager, Lower Elwha Tribe, for appellant.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Lower Elwha Tribe seeks review of a May 1, 1989, decision of the Portland Area Director, Bureau of Indian Affairs (BIA; appellee), denying its application for funding under the Core Management grant program. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

### Background

Appellant's application for a fiscal year 1989 Core Management grant from the Portland Area Office (Area) was 1 of 25 applications the Area received. These applications requested grants in the amount of \$785,689. The Area received \$385,000 for fiscal year 1989 Core Management grants. Each application was separately reviewed and ranked based upon the scores

a panel of reviewers gave to the application for each of five criteria. The Area was able to fund the 13 highest ranked applicants, but did not have sufficient funds to provide grants to the remaining tribes.

Appellant's score of 71.4 placed it sixteenth on the Area's list. By letter dated May 1, 1989, appellee informed appellant that its application did not receive a high enough score to be funded. Appellant filed a notice of appeal from this decision with appellee, who received it on May 18, 1989. Appellee assembled an appeal package which was forwarded to the Board by memorandum dated July 10, 1989. The Board received the appeal on July 21, 1989. <sup>1/</sup> The Board received an additional statement from appellant on August 8, 1989. No other statements were filed.

### Discussion and Conclusions

Core Management grants are offered by BIA under authority of 25 U.S.C. § 13 (1982); <sup>2/</sup> regulations found in 25 CFR Part 278, Subpart C; and Office of Management and Budget Circular A-102 (Revised), which is referenced in 25 CFR 278.24(a). The primary purpose of these grants, as set forth in 25 CFR 278.21, is to supplement the resources of small tribes in order to enable them to provide for basic, or core, tribal management needs, thereby strengthening their governments and encouraging and fostering their development.

In this appeal, appellant does not allege that appellee committed any specific errors in reviewing its application. Instead, appellant emphasizes its need for Core Management funds in order to continue to develop its tribal management infrastructure.

[1] Decisions concerning whether or not a particular application for a Core Management grant should be funded are committed to the discretion of BIA. In reviewing such decisions, it is not the Board's function to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion. Cf. Escalanti v. Acting Phoenix Area Director, 17 IBIA 290 (1989) (discretionary decision whether

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<sup>1/</sup> New appeals regulations for BIA and the Board took effect on Mar. 13, 1989. See 54 FR 6478 and 6483 (Feb. 10, 1989). Although the proper appeal procedures were not followed here, the Board accepted the appeal because appellee's decision letter did not clearly advise appellant of the proper procedures. Under 25 CFR 2.7(b) and (c) (54 FR 6481), the time for filing a notice of appeal does not begin to run until written notice of the proper appeal procedures has been given to parties adversely affected by the decision.

<sup>2/</sup> Section 13 provides in pertinent part that "[t]he Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States" for the purposes thereafter specified.

or not to approve a conveyance of Indian trust or restricted land); City of Eagle Butte, South Dakota v. Aberdeen Area Director, 17 IBIA 192, 96 I.D. 236, modified on other grounds, 18 IBIA 21 (1989) (discretionary decision whether or not to acquire land in trust status for an Indian individual or tribe); Hamilton v. Acting Anadarko Area Director, 17 IBIA 152 (1989) (discretionary decision whether or not to approve a loan from the Indian Revolving Loan Fund).

The Board has reviewed appellant's grant application and the comments made by both the Olympic Peninsula Agency and the Area. Those comments indicate that appellant has benefited from previous grants and has made great progress in improving its tribal management expertise in a very short period of time. There is every reason to believe that appellant would apply additional Core Management funds as effectively and efficiently as it has prior funds.

The amount of money available for the Core Management program in any particular area is, however, limited by the amount Congress appropriates for the program and the division of that total among all of BIA's Area Offices. Because the funds available for the program were less than the total amount requested by the tribes eligible for the program, some form of competitive allocation of the available funds was necessitated. The system established by BIA, in which each application is reviewed and ranked and funds are awarded based upon positions within that ranking, is a reasonable and objective method of allocating those funds.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the May 1, 1989, decision of the Portland Area Director is affirmed.

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed

Anita Vogt  
Administrative Judge